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THE
AMERICAN LAW REGISTER.

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HOMESTEAD AND EXEMPTION LAWS OF THE
SOUTHERN STATES.

1. *Synopsis of the Constitutions and Statutes of the Southern States relative to Homesteads and Exemptions; and the decisions of the Supreme Courts of the respective States under said Constitutions and Statutes.*
2. *The constitutionality, construction, effect, &c., of said Homestead and Exemption Laws.*

I. SYNOPSIS OF THE HOMESTEAD AND EXEMPTION LAWS OF THE
SOUTHERN STATES, &c.

ALABAMA.—Article XIV. of the Constitution of 1868 provides as follows:—

“SEC. 1. The personal property of any resident of this state to the value of one thousand dollars, to be selected by such resident, shall be exempted from sale on execution or other final process of any court, issued for the collection of any debt contracted after the adoption of this Constitution.

“SEC. 2. Every homestead, not exceeding eighty acres of land and the dwelling and appurtenances thereon to be selected by the owner thereof, and not in any town, city, or village, or in lieu thereof at the option of the owner, any lot in the city, town, or village, with the dwelling and appurtenances thereon, owned and occupied by any resident of this state, and not to exceed the value of two thousand dollars, shall be exempted from sale, on execution,

or any other final process from a court, for any debt contracted after the adoption of this Constitution. Such exemption, however, shall not extend to any mortgage lawfully obtained, but such mortgage, or other alienation of such homestead, by the owner thereof, if a married man, shall not be valid without the voluntary signature and assent of the wife of the same.

“SEC. 3. The homestead of a family, after the death of the owner thereof, shall be exempt from the payment of any debts contracted after the adoption of this Constitution, in all cases, during the minority of the children.

“SEC. 4. The provisions of sections 1 and 2 of this article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming such exemption, or a mechanic's lien for work done on the premises.

“SEC. 5. If the owner of a homestead die, leaving a widow, but no children, the same shall be exempt, and the rents and profits thereof shall enure to her benefit.”

And by the Revised Code, page 565, the following property is exempt from execution:—

SEC. 2878 (2460). The goods and chattels in possession of and upon the premises of a tenant held by lease for one or more years until the rent due or to fall due during the current year is paid or tendered to the landlord.

SEC. 2879 (2461 a). The growing crop, except for the purpose of enforcing the lien of the landlord for rent.

SEC. 2880 (2462). Property exempt for the use of every family in this state:—

“1. Household and kitchen furniture of the value of one hundred and fifty dollars, to be selected by the head of the family; all necessary and proper wearing apparel of each and every member of the family, not to exceed in value fifty dollars for each member of the family, the value thereof to be assessed by three disinterested persons, to be selected by the sheriff.

“2. All books not kept for sale, all family portraits, one gun, one loom, two spinning-wheels, one man's and one woman's saddle.

“3. Two cows and calves, twenty head of sheep, twenty head of hogs, one work-horse or mule, or one pair of oxen, one horse or ox cart, all poultry on the place, five hundred pounds of meat, one hundred bushels of corn, one thousand pounds of fodder,

twenty-five bushels of wheat, one thousand pounds of oats in the sheaf, twenty-five bushels of sweet potatoes, all the meal at any time on hand not kept for sale, thirty pounds of wool or wool-rolls, two hundred pounds of lint cotton for spinning purposes, one hundred pounds of ginned cotton or four hundred pounds of seed cotton, all cloth on hand at any one time, not made or kept for sale, all tools or implements of any mechanical trade not kept for sale, not to exceed two hundred dollars in value, two ploughs and plough-gear, and two hoes.

“4. Such real property as may be selected by the head of the family, to include the homestead, not to exceed three hundred and twenty acres, and not to exceed in value five hundred dollars; all burying grounds and lots set apart for the interment of deceased persons, and the improvements and appurtenances to the same appertaining, are reserved for the use of the families to whom they respectively belong.”

SEC. 2881 (2463). This section directs how the value of the homestead shall be settled.

SEC. 2882 (2463 *a*). “In addition to the property hereinbefore exempted, there may be in like manner exempted, for the use of any mechanic, the head of a family in this state, two hundred dollars’ worth of such stock and materials as may be used by him in the prosecution of his trade.”

SEC. 2883 (2463 *b*). This section exempts one-half of the salary or wages of the head of a family, when the exemptions under other laws do not exceed five hundred dollars in value, and in no case to be less than twenty-five dollars per month of such salary or wages.

SEC. 2884 (2463 *c*). “In addition to the real and personal property permanently exempted [by other laws] from levy and sale under legal process, there shall be retained by virtue of this section, adopted 19th February 1867, for the use and benefit of every family, twelve hundred dollars’ worth of real estate, including the homestead, and one thousand dollars’ worth of personal property: provided that nothing contained in this section shall have the effect to exempt any property from levy and sale in satisfaction of any liability incurred by the execution of any official bond or bonds, or other bond required by law. The provisions of this section shall not apply to administrators, guardians, or trustees or their sureties on their official bonds, for liabilities in-

curred in their representative character. This section shall not operate against the liens of laborers and mechanics.”¹

ARKANSAS.—The statutes of this state are still unpublished. The legislature have recently adopted the Code, thereby changing, to a great extent, the statutes of the state. Under the present homestead and exemption laws, the head of a family is entitled to five thousand dollars in real property and two thousand in personal property—in all seven thousand dollars.²

FLORIDA.—The provision of the Constitution is as follows:—

“A homestead to the extent of 160 acres of land, or the half of one acre within the limits of any incorporated city or town, owned by the head of a family residing in this state, together with one thousand dollars’ worth of personal property, and the improvements on the real estate, shall be exempted from forced sales under any process of law; and the real estate shall not be alienable without the joint consent of husband and wife, when that relation exists. But no property shall be exempt from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon, or for house, field, or other labor performed on the same. The exemption herein provided for in a city or town shall not extend to more improvements or buildings than the residence or business house of the owner.” Const. of 1868, *Art. 9*, sec. 1.

In addition to the exemption provided for in section 1st, section 2d provides for an additional exemption to the head of a family of such property as he or she may select, to the amount of \$1000, which exemption shall only prevent the sale of property in cases where the debt was contracted, liability incurred, or judgment obtained, before the 10th day of May, A. D. 1865. Said property is not exempt from the payment of the purchase-money for the same, or the payment of taxes or labor.”³

GEORGIA.—The provision of the Constitution is as follows:—

“Each head of a family, or guardians or trustee of a family of

¹ For the foregoing we are indebted to Hon. T. M. Peters, of Moulton.

² For the foregoing summary we are indebted to Garland & Nash, Esqs., of Little Rock.

³ For the foregoing we are indebted to George P. Raney, Esq., of Tallahassee.

minor children shall be entitled to a homestead of realty to the value of \$2000 in specie, and personal property to the value of \$1000 in specie, both to be valued at the time they are set apart. And no court or ministerial officer in this state shall ever have jurisdiction or authority to enforce any judgment, decree, or execution against said property so set apart, including such improvements as may be made thereon from time to time, except for taxes, money borrowed or expended in the improvements of the homestead, or for the purchase-money for the same, and for labor done thereon or material furnished therefor, or removal of encumbrances thereon :” Const. of 1868, Art. 7, Sec. 1 ; also Act of October 3d 1868, passed to carry said provision into effect.

If the applicant seeks to have a homestead set apart out of town property exceeding in value \$2000 in specie, and it cannot be so divided as to give a homestead of that value, an order is granted by the court that should said property thereafter be sold by virtue of any order, judgment, or decree of any court of this state, \$2000 in specie, or its equivalent in currency, of the proceeds of such sale (or the whole of said proceeds if they do not exceed that amount), shall be paid over to the court to be invested in a home for the benefit of the family of the applicant, &c. : Act of October 3d 1868.

By the Act of October 3d 1868, enacted to carry into effect the Constitution of 1868 (Art. 7, Sec. 1, *supra*), as to homesteads and exemptions, it is declared that “nothing contained in said acts shall be construed to prevent any debtor, who does not wish to avail himself of the benefit of the homesteads and exemptions as set forth in the Constitution of 1868, and said act, from claiming the homesteads and exemptions allowed in section 2013 of the Code. But the applicant cannot take the benefit of both acts :” Acts of 1868, p. 29.

Under section 2013 of the Code “the following property of every debtor, who is the head of a family, shall be exempt from levy and sale by virtue of any process whatever, under the laws of this state ; nor shall any valid lien be created thereon, &c.

“1. Fifty acres of land, and five additional acres for each of his or her children under the age of sixteen years. This land includes dwelling-house, if value of house and improvements do not exceed \$200, provided none of the above land be within the limits of a city, town, or village, and does not include any cotton

or wool factory, saw or grist-mill, or any other machinery propelled by water or steam, the value of which exceeds \$200; and that such land shall not derive its chief value from other cause than its adaptation to agricultural purposes; or, in lieu of the above land, real estate in a city, town, or village, not exceeding \$500 in value.

"2. One farm horse and mule; one cow and calf: ten head of hogs, and fifty dollars' worth of provisions, and five dollars' worth additional for each child; bed, bedding, and common bedsteads sufficient for family; one loom, one spinning-wheel, and two pairs of cards, and one hundred pounds of lint cotton; tools of trade for himself and wife; equipment and arms of a militia soldier and trooper's horse; cooking utensils, crockery, wearing apparel for himself and wife, family Bible, religious and school books, family portraits; the library of a professional man in actual practice or business, not exceeding \$300 in value."

Upon the Constitution and the Act of 1868, and the Code (section 2013) which went into effect on the 1st January 1863, the Supreme Court of Georgia have delivered several decisions.

As to the Constitutionality of said Acts.—"Homestead and exemption laws, when made in good faith, to secure to the family of insolvent debtors a reasonable means of subsistence from the debtor's property, do not even, though retroactive, fall within the prohibition of Art. 10, sec. 1, of the Constitution of the United States, declaring that no state shall pass any law impairing the obligation of a contract: *Hardiman v. Donner*, 39 Ga. 425.

"The homestead provision of the Constitution of 1868 is retroactive, and applies to judgments, executions, and decrees, founded on debts contracted before its adoption, even though reduced to judgment before that time, and is without exception, save as therein provided:" *Id.*

"The Constitution of the United States does not prohibit a state from divesting a vested right, except when that right is vested by virtue of and under a contract of the parties. A creditor under an ordinary contract acquires no vested right in the property of his debtor; and it is within the power of a state to declare which of the claimants against an insolvent debtor—a stranger or his wife and family, who, by law, have a legal right to a support from him—shall have preference:" *Id.*

"The condition of this state in the formation and adoption of

the Constitution of 1868 was anomalous, and it was competent for the convention and the people, with the express consent of the United States, to adopt as a part of the Constitution the article therein providing for a homestead, or any other provision designed to adjust the evils and inequalities produced by the ravages of the war and the emancipation of the slaves: such provisions stand upon the footing of a compact between the state and the United States, at the close of the war, in adjustment of the inequalities produced between individuals by the settlement imposed upon the people by the United States:" *Id.*

Mortgages and Judgments.—"A mortgage given by the debtor is not one of the exceptions provided by the Constitution to which the homestead for his family is liable:" *Chambliss v. Phelps*, 39 Ga. 386. "Where one Harrison had a judgment against Kelly, and was about to levy on and sell the land now in controversy, and Kelly applied to Thomas, who loaned him the money to relieve the land from sale, and took his note, secured by mortgage, the lien of which it is now sought to enforce by the sale of the land, and Kelly claims a homestead in the land as against the mortgage lien: *held*, that Kelly is not entitled to claim a homestead in the land, because as to past contracts the plaintiff's mortgage created an 'encumbrance' upon the land which the defendant is bound to discharge before he is entitled to a homestead under that act. The term 'encumbrances,' as used in the Constitution of 1868, was there used in the *legal sense* of that word, and should receive its *obvious legal interpretation* by the courts in the construction thereof:" *Kelly v. Stephens*, 39 Ga. Rep. 466. "A homestead is not subject to the payment of a judgment obtained prior to the passage of the homestead law, which does not fall within one of the exceptions mentioned in the Act of 1868:" *Pulliam et al. v. Sewell et al.*, decided March 22d 1870; to appear in 40 Ga.

"An execution which was issued from a judgment to foreclose a mortgage before the adoption of the Constitution of 1868 cannot be enforced against the homestead. A homestead is subject to an execution founded upon a debt contracted for the purchase-money, and the fact that the debt has been transferred to a third party does not change that liability; and it is subject to the payment of the purchase-money, whether contracted before or since the Constitution; and if the judgment for the purchase-money is dormant, but not barred by the Statute of Limitations, the home-

stead is still bound for its satisfaction, if it is revived within the period allowed by the statute:" *Chambliss v. Phelps*, 39 Ga. 388, 390.

Exceptions.—The exceptions in the homestead provisions of the Constitution of 1868 apply as well to the personalty as to the realty set apart, provided the specific property is capable of identification: *Phelps v. Porter*, decided March 31st 1870; to appear in 40 Ga.

As to Purchasers with Notice.—"Where property is levied on to satisfy a *fi. fa.*, and before the sale the defendant applies to the court, under the Act of 1868, for a homestead in the property levied on, the property is subject to the homestead, and if it is sold with notice of the application, the purchaser buys it with that encumbrance upon it:" *Blivins v. Johnson*, decided March 15th 1870; to appear in 40 Ga.

"Where the head of a family applies to the court to have a homestead set apart under section 2013 of the Code, and the land was sold at sheriff's sale pending this application, the purchaser at such sale with notice that such application was pending took the property, under the Code, subject to the encumbrance of the homestead when properly laid off;" *Kilgore v. Beck et al.*, decided March 15th 1870; to appear in 40 Ga.

As to pre-existing Creditors.—"The wife of the defendant in *fi. fa.* is entitled, under section 2013 of the Code, to have \$500 of the proceeds of the sale of a town lot set apart and invested in a house for herself and family, against a *pre-existing* creditor:" *Maxay, Jordan & Co. v. Loyal*, 38 Ga. 531.

What is meant by "the Head of a Family."—"An unmarried man, whose indigent mother and sisters live with him, and are supported by him, is the head of a family:" *Marsh et al. v. Lazenby*, decided July 5th 1870.

Rights of Widows and Minors as to Homestead.—"The widow and minor children of a deceased person are entitled to a homestead, to be laid off just as it would have been upon the application of the husband and father prior to his death:" *Hodo v. Johnson & Heath*, decided March 22d 1870; to appear in 40 Ga.

Rights of a Bankrupt under Homestead Acts.—"The homestead and exemption provision of the Code, § 2013, is the Exemption Law of this state, referred to in the Bankrupt Act of the United States, and as by the Code, said homestead is not subject to levy

and sale, even for the purchase-money, a judgment against a discharged bankrupt, though obtained before his discharge, cannot levy upon and sell a homestead for the bankrupt, set apart by the bankrupt officials, even though said judgment be for the purchase-money of the same:" *Ruskin v. Gause*, decided July, 1870.

"A bankrupt is not entitled to the exemption of a homestead out of land mortgaged by him at the time of its purchase, to secure the payment of the purchase-money until the said mortgage is satisfied:" *In re John B. Whitehead*, bankrupt, Southern Dist. of Ga., ERSKINE, J., April, 1869. "The homestead of a bankrupt cannot be sold after he has filed his petition in bankruptcy, although it may then be levied upon by the United States Marshal:" *In re Jesse H. Griffin*, ERSKINE, J., Southern Dist., Ga., 2 Bank. Reg. 85.

As to Taxes.—"The state is bound by the Acts of the Legislature, exempting certain articles of property from levy and sale for debts, for the benefit of the wife and children of the debtor; and such property, exempted under § 2013 Code, cannot be seized and sold under execution to pay the taxes due by him:" *Doe ex dem. Gledney v. Deavors*, 11 Ga. 79.

As to Judgments founded on Torts.—"The Homestead Exemption Acts, as contained in the Code, do not protect property from judgments founded on *torts*; they apply expressly and exclusively to judgments founded on *contracts*:" *Davis v. Henson*, 29 Ga. 345.

From the foregoing decisions it will be seen that the Supreme Court has so construed the Homestead and Exemption Laws as to almost entirely deprive a creditor from collecting his debts. From the foregoing decisions we deduce the following points, which are most important to creditors:—

1. That the homestead provision of the Constitution of 1868 is retroactive, and applies to judgments, executions and decrees, founded on debts contracted *before* its adoption, *even though reduced to judgment before that time*, unless they fall within the exceptions provided for in the Constitution.

2. That if the mortgages, judgments, executions, and decrees are founded upon debts contracted for *money borrowed and expended in the improvements of the homestead*; or, for the purchase-money of the same; or, for labor done thereon; or, for materials furnished therefor; or, for removal of encumbrances;

or, for taxes, that then said mortgages, judgments, executions, and decrees *can be enforced*, and the homesteads and exemptions *made subject to them*.

3. That under the Homestead and Exemption laws of the Code, § 2013, *no executions or liens whatsoever*, whether contracted *before* or *after* the adoption of the Code, can be enforced.

4. *All produce, rents or profits* arising from homesteads shall be exempt from levy and sale, *except* as is provided for in the case of the homestead itself, with the following additional *exceptions*:— For *stock, provisions, and other articles used in making the crop*; for *necessaries for the family*; for *medical services for the family*; and for *tuition for education*.

LOUISIANA.—Under the Code of Practice it is declared that the sheriff cannot seize; the linen and clothes belonging to the debtor or his wife; his bed, nor those of his family; his arms and military accoutrements; the tools and instruments necessary for the exercise of the trade or profession by which he gains a living; the right of personal servitude, of use and habitation, of usufruct to the estate of a minor child, or the income of dotal property; the agricultural implements and working cattle separately from the land to which they are attached; the corn, fodder, hay, provisions, and other supplies necessary for carrying on the plantation to which they are attached for the current year. Also 160 acres of ground, and the buildings and improvements thereon, occupied as a residence, and *bonâ fide* owned by the debtor, having a family, or mother, or father, or person or persons dependent on him for support; also, one workhorse, one wagon or cart, one yoke of oxen, two cows and calves, twenty-five head of hogs, or 1000 pounds of bacon or equivalent in pork; and in the case of a farmer the necessary quantity of corn and fodder for the current year: *Provided*, that the property herein declared to be exempt from seizure and sale does not exceed in value \$2000.

No debtor is entitled to the exemption provided for in this section, whose wife shall own property worth more than \$1000. (Whenever the widow or minor children of a deceased person shall be left in necessitous circumstances, and not possess in their own right property to the amount of \$1000, the widow or the legal representatives of the children shall be entitled to demand and receive from the succession of their deceased father or

husband a sum which, added to the amount of property owned by them or either of them, in their own right, will make up the sum of \$1000, and which said amount shall be paid in preference to all other debts, except those for the vendor's privilege, and expenses incurred in selling the property: Revised Stat. of 1870, sec. 1693). And provided further, that no property shall be exempt from sale, by virtue of this provision, for non-payment of taxes or assessments levied pursuant to law, nor for debt contracted for the purchase-price of said exempted property, nor for money due for rents, bearing a privilege on said property under existing laws:" Articles 644, 645.

"But if the debtor has neither movable nor immovable property, the sheriff may seize the rights and credits which belong to him, and all sums of money which may be due to him, in whatsoever right, unless it be for alimony or salaries of office:" Article 647.

From the above it will be seen that there has been but little legislation on the law of homesteads and exemptions, since the war, in Louisiana.

MISSISSIPPI.—Under the statutes of Mississippi the following property is exempt from seizure and sale, under execution:

The tools of a mechanic necessary for carrying on his trade, and five hundred dollars' worth of material used in his business, and the agricultural implements of a farmer necessary for two male laborers; the implements of a laborer necessary in his usual employment; books a student requires for the completion of his education; wearing apparel of every person; libraries of all persons; saddles and bridles necessary for the use of the family; the instruments of surgeons and dentists used in their profession; the arms and accoutrements of each and every person; all globes, pictures, and scientific apparatus, books and maps used by teachers of schools, academies, colleges, and heads of families; also, the head of every family being a housekeeper, 240 acres of land, regardless of its value, so laid off as to include the dwelling-house and other buildings and the farm, so far as the same can be done without including more than 240 acres of land; all household and kitchen furniture; all necessary articles of husbandry usually used and needed in carrying on a farm; farm horses or mules necessary to carry on the farm, not to exceed four in number;

one year's supply of provisions for the family and hands employed to carry on the farm; one year's supply of forage for the teams and stock of every kind exempted by this act; fifty head of hogs, twenty head of cattle, including work oxen, twenty head of sheep, one wagon and one cart: Laws of 1865, p. 137, Sec. 1, approved November 28th.

"Each head of a family, being a housekeeper resident in any incorporated city, town, or village in this state, may and shall be entitled to hold and own, exempt from seizure, levy, and sale, under execution or attachment, four thousand dollars' worth of real and personal property, comprising the proper homestead and other buildings connected therewith:" Id. Sec. 2.

From the above statute it will readily be seen that the collection of any debts whatever is almost entirely prevented.¹

NORTH CAROLINA.—By the Constitution, Art. X. sect. 1, "The personal property of any resident of this state to the value of \$500, to be selected by such resident, shall be and is hereby exempted from sale under execution or other final process of any court issued for the collection of any debt."

Art. X. sect. 2. "Every homestead and the dwelling and buildings used therewith, not exceeding in value \$1000, to be selected by the owner thereof, shall also be exempted."

There has been suitable legislation to carry out said provision.

The Supreme Court, upon the question whether the provision of the state Constitution (art. x. §§ 1, 2, *supra*), exempting certain property from execution sale, impairs the obligation of pre-existing contracts, decided that the exemption of a homestead of \$1000, and of personal property worth \$500, *applies to debts existing before the adoption of the Constitution: Hill v. Kessler*, 63 N. C. 427.

In *McKeithan v. Terry*, 64 N. C. 25, the execution was levied before the adoption of the Constitution; and the Court held that there was a *specific lien*, a vested *right*, which it was not the purpose of the Constitution to destroy, if indeed it had the power.

In *Sluder v. Rogers*, 64 N. C. 289, the court held, 1. The minor

¹ In *Stephenson v. Osborne*, 41 Miss. R. 119, the Supreme Court held that the Exemption Law of that state "was constitutional as to contracts existing at the time of its passage."

heirs of one who died *before* the adoption of the Constitution of 1868, are not entitled to a homestead in the land descended to them from their father, as against their *father's* debts. They would be as against *their own* debts. So they would be as against their *father's* debts, if he had died *after* the adoption of the Constitution.

2. A conveyance in trust to pay debts, made *before* the adoption of the Constitution, gives to the creditors secured, a lien superior to the homestead.

We deduce the following points from the above decisions, which are of special interest to creditors :—

1. The Homestead and Exemption Laws apply to debts (mere indebtedness) existing *before* the adoption of the Constitution of 1868—*debts* not being a *lien* upon the property of the debtor.

2. *Specific* liens created *before* the adoption of the Constitution are not divested by the provision for a homestead in it.

3. The minor heirs of one who dies *before* the adoption of the Constitution are not entitled to a homestead in the lands of their father as against his debts; but if he died *after* the adoption of the Constitution, *then* they would be entitled to a homestead.

SOUTH CAROLINA.—By the Constitution, adopted on the 17th day of March 1868, Art. II., Sect. 32, it is provided that “the family homestead of the head of each family consisting of dwelling-house, out-buildings, and lands appurtenant, not to exceed \$1000, and yearly products thereof, shall be exempt from attachment, levy, or sale on any mesne or final process issued from any court.” And the following personal property, to wit :—

“Household furniture, bed and bedding, family library, arms, carts, wagons, farming implements, tools, neat cattle, work animals, swine, goats, and sheep, not to exceed in value, in the aggregate, \$500, shall be subject to like exemption as said homestead; and there shall be exempt in addition all necessary wearing apparel: *Provided*, that no property shall be exempt from attachment, levy, or sale, for taxes, or for payment of obligations contracted for the purchase of said homestead, or the erection of improvements thereon. *Provided further*, that the yearly products of said homestead shall not be exempt from attachment, levy, or sale for the payment of obligations contracted in the production of the same.”

No decisions upon the Homestead and Exemption Act, have been published up to this time.¹

TENNESSEE.—The Code of 1858, Art. 2107, contains a long enumeration of the “articles of household furniture, provisions, cow and calf, horse, poultry,” &c., exempted. The list is long, but contains only articles of absolute necessity for a family in humble life. In favor of “heads of families engaged in agriculture there are exempted also certain agricultural implements, five sheep and ten hogs.” In favor of a “mechanic, a set of tools, and in favor of every male citizen of eighteen years a gun.” “Such property, on the death of the owner, is exempted from execution in the hands of his widow and children. Any life-insurance effected by a husband on his own life, enures to the benefit of his widow and children, and is not liable for his debts.”

By an act passed March 12th 1868, “the value of the homestead exemption was increased from \$500 to \$1000, and there is exempted in favor of the heads of families in this state 250 dollars’ worth of personal property, in addition to that now allowed under the Code of 1858, Art. 2107.

From the above it will be seen that there has been but very little legislation in the state of Tennessee on the subject of homesteads and exemptions.

TEXAS.—By act of August 15th 1870, it is enacted as follows:—

SEC. 1. The homestead of a family not to exceed two hundred acres of land (not included in a city, town, or village), or any city, town, or village lot or lots not to exceed five thousand dollars in value at the time of their destination as a homestead, and without reference to the value of any improvements thereon, shall not be subject to forced sale for debts, except for the purchase-money thereof, or for taxes, or labor and materials expended thereon.

SEC. 2. There shall also be reserved to every family in this state, free and exempt from forced sale for debts, the following property: All household and kitchen furniture; all implements of husbandry; all tools and apparatus belonging to any trade or

¹ For our information as to the laws of South Carolina we are indebted to Hon. Wm. F. Colcock, of Gillisonville.

profession; and all books belonging to public or private libraries; five milch cows and calves; two yoke of oxen; two horses and one wagon; one carriage or buggy; one gun; twenty hogs; twenty head of sheep; all provisions and forage on hand for home consumption; all saddles, bridles, and harness necessary for the use of the family; and to every citizen not a head of a family one horse, bridle, and saddle, all wearing apparel, all tools, apparatus and books belonging to his private libraries.¹

VIRGINIA.—By the Act of February 20th 1867, in case of a husband, parent, or other person, who is a housekeeper and head of a family, there shall be exempt from distress or levy the following articles: The family Bible; family pictures, school books, and libraries for the use of the family, not exceeding one hundred dollars in value; a seat or pew in any house or place of public worship; a lot in any burial-ground; all necessary wearing apparel of the debtor and his family; all beds, bedsteads, and bedding necessary for the use of such family; all stoves and appendages put up and kept for the necessary use of the family, not to exceed three; one cow, one horse, six chairs, one table, six knives, six forks, six plates, one dozen spoons, two dishes, two basins, one pot, one oven, six pieces of wood or earthenware, one loom and its appurtenances, one safe or press, one spinning-wheel, one pair of cards, one axe, two hoes, five barrels of corn, five bushels of wheat or one barrel of flour, two hundred pounds of bacon or pork, three hogs, ten dollars in value of forage or hay, one cooking stove and utensils for cooking therewith, and one sewing machine; and in case of a mechanic, the tools and utensils of his trade, not exceeding one hundred dollars in value.

If the debtor be at the time actually engaged in the business of agriculture, there shall be exempt from such distress or levy, while he is so engaged, one yoke of oxen, or a pair of horses or mules in lieu thereof, with the necessary gearing; one wagon or cart, two ploughs, one dray, one harvest-cradle, one pitchfork, one rake, two iron wedges.

By the Constitution of 1868, Art. 11, Sect. 1, every head of a family shall be entitled, in addition to the articles exempt from

¹ We are indebted for the foregoing statement of the laws of Texas to Gray & Botts, Esqs., of Houston.

levy or distress for rent by the foregoing act, to hold exempt from levy, seizure, garnisheeing, or sale under execution, order, or other process, issued on any demand for any debt heretofore or hereafter contracted, his real and personal property, or either, including money and debts due him, whether heretofore or hereafter acquired or contracted, to the value of not exceeding \$2000, to be selected by him: *Provided*, That such exemption shall not extend to any execution, order, or other process issued on any demand in the following cases: 1st. For the purchase-price of said property or any part thereof. 2d. For services rendered by a laboring person or a mechanic. 3d. For liabilities incurred by any public officer, or officer of a court, or any fiduciary, or any attorney at law, for money collected. 4th. For a lawful claim for any taxes, levies, or assessments accruing after the 1st day of June 1866. 5th. For rent hereafter accruing. 6th. For the legal or taxable fees of any public officer, or officers of a court, hereafter accruing.

SEC. 2. The foregoing section shall not be construed as subjecting the property hereby exempted, or any portion thereof, to any lien by reason of any execution levied on property which has been subsequently restored to the defendant, or judgment rendered or docketed on and after the 17th day of April 1861, and before the 2d day of March 1867, for any debt contracted previous to the 4th day of April 1865, except debts of the character mentioned in either of the above first three exceptions.

SEC. 3. Nothing contained in this article shall be construed to interfere with the sale of the property aforesaid, or any portion thereof, by virtue of any mortgage, deed of trust, pledge, or other security thereon.

SEC. 4. The General Assembly is hereby prohibited from passing any law staying the collection of debts, commonly known as "stay laws"—but this section shall not be construed as prohibiting any legislation which the General Assembly may deem necessary to fully carry out the provisions of this article.

SEC. 5. The General Assembly shall at its first session under this Constitution prescribe in what manner and on what conditions the said householder or head of a family shall thereafter set apart and hold for himself and family, a homestead out of any property hereby exempted, and may, in its discretion, determine in what manner and on what conditions he may thereafter hold,

for the benefit of himself and family, such personal property as he may have, and coming within the exemption hereby made. But this section shall not be construed as authorizing the General Assembly to defeat or impair the benefits intended to be conferred by the provisions of this article.

By an Act of June 27th 1870 the General Assembly, in accordance with section 5 of the foregoing article of the Constitution, prescribed the mode of setting apart exempted property. By this act the debtor may waive the benefit of the exemptions given by the Constitution, but not those under the Act of 1867. The mode of setting apart the homestead, &c., is elaborately provided for.

J. H. THOMAS,
Savannah, Ga.

(To be concluded in the next number.)

RECENT AMERICAN DECISIONS.

Supreme Judicial Court of Maine.

CHARLES W. GODDARD v. THE GRAND TRUNK RAILWAY.

A common carrier of passengers is responsible for the wilful misconduct of his servant toward a passenger.

A passenger who is assaulted and grossly insulted in a railway car by a brakeman employed on the train, has a remedy therefor against the company.

If a brakeman, employed on a railway passenger train, assault and grossly insult a passenger thereon, and the company retain the offending servant in their service after his misconduct is known to them, they will be liable to exemplary damages.

The plaintiff, a highly respectable citizen, and a passenger in the defendants' railway car, on request, surrendered his ticket to a brakeman authorized to demand and receive it. Shortly after, the brakeman, without provocation, approached the plaintiff in his seat, and, accosting him in a loud voice, denied, in the presence of the other passengers, that he had seen or received the plaintiff's ticket, and in language coarse, profane, and grossly insulting, called the plaintiff a liar, charged him with then attempting to evade the payment of his fare, and with having done so before; and leaning over the plaintiff, then in feeble health and partially reclining in his seat, and bringing his fist down close to his face, violently shook it there, and threatened to split the plaintiff's head open and to spill his brains right there on the spot, with much more to the same effect. The defendants, although well knowing the brakeman's misconduct, did not discharge him, but retained him in his place, which he continued to occupy at the time of the trial.